IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 105 of 2005

KHARNADA MATH S.D.PRANYAS & ORS
V/S
MOOLA BHARTI & ORS

Mr. DD CHITLANGI, for the appellant / petitioner

Date of Order : 2.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

By the impugned order, the learned trial Court had dismissed the appellant's application filed under Order 39 Rule 1 and 2 CPC. The matter arises in the circumstances that the appellant (purportedly the Math, a public trust) filed a suit against the defendants, alleging inter alia, that the last Mahant of the Math was Shri Rajgiri, who expired on 15.12.1990, and thereafter, the defendants are claiming themselves to be the owner of the property, and are leasing out the property, and transferring the possession. With these allegations, the suit has been filed for recovery of possession, and mesne profits.

It was alleged that during pendency of the suit, the defendants started excavation, foundation, and raising constructions, and therefore, injunction was prayed, restraining the defendants from raising construction, and making any alteration in the property.

The application was opposed by the defendants no.1 and 2 inter alia, on the ground that the Math is not a public trust, and the person, signing the plaint, being Anand Acharya, has nothing to do with the property. The fact of death of Rajgiri on 15.12.90 was not disputed, but the stand was taken, to the effect, that during lifetime, Rajgiri himself has appointed the defendant no.2 as his disciple, and has made a Will of the property in his favour. The allegation about raising construction was denied. It was also alleged that the persons, Anand Acharya, Gyan Prakash, etc., are self styled trustees, and since the trust is not registered, on the face of the provisions of Section 29 and 73 of the Rajasthan Public Trust Act, the suit is not maintainable. The objection about valuation, and court fees was also raised. Then it was also alleged, that the Patta with respect to the immovable property of the Math is in the name of the ancestors of the defendant being about 175 years old. It was also alleged that it was on 31.12.1990, i.e. after death of Rajgiri, that various Mahants of various Maths had performed the ceremony of declaring the defendant no.2 to be the Mahant of the Math, and as such, he is in possession of the property.

The learned trial Court found that there is no basis for

prima-facie believing that the trust is a public trust, and locus-standi of Anand Acharya is not clear. The date of death of Mahant Rajgiri, being an admitted fact, while the defendants no.1 and 2 are the father and son, and are admittedly in possession of the property, while Anand Acharya, and Gyan Prakash want to dispossess them purportedly on behalf of the deities installed in the Math, but then, there is nothing to show that what locus-standi they have. It was also found that the defendant no.2 has been declared to be the Mahant of the Math on 31.12.90, and is having a Will from Mahant Rajgiri, as such, the learned trial Court did not find any prima-facie case. Obviously, the other two factors were also found against the plaintiff-appellant, and the application was dismissed.

Admittedly, the so-called trust is not a registered public trust, and the learned counsel pointed out that registration proceedings are already pending against the competent authorities. Be that as it may. The fact further does remain that even after the trust is to be registered, the relief, claimed by the plaintiff at best, is about the person in possession claiming to be the Mahant of the Math to be mismanaging the properties of the trust. In those circumstances, on the face of the language of Section 73 of the Rajasthan Public Trust Act, it cannot be said that the plaintiff has any prima-facie case for claiming any injunction against the defendants from the Civil Court. This is, apart from the fact, that as appears from the record that the defendants are in admittedly settled possession of the property at least since death of Mahant Rajgiri, and the plaintiff has filed the suit to assert his rights, and to claim possession of the property. It may also be noticed that it appears that yet another suit, being civil suit no.63 of 1993 (Maganlal Vs. Rajgiri) is already pending before the Additional Civil Judge (Sr.Div.) No.1, Bikaner, and the learned counsel for the appellant points out that, that suit is also a suit, claiming practically the identical reliefs, as claimed in the present suit, in which background, the plaintiff cannot be allowed to interfere with the possession of the defendant by resorting to the subterfuge of the temporary injunction. Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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